

Suggested HAR changes for
Clarifying Responsibility and Past Performance by
Amending HAR §3-122

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment to Chapter 3-122

Interim

Hawaii Administrative Rules

October 30, 2014

SUMMARY

1. §3-122-1 is amended.
2. §§3-122-9.03 and 3-122-52.1 are added.

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 122

SOURCE SELECTION AND CONTRACT FORMATION

1. Section 3-122-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Past performance" means available recent and relevant performance by the contractor on state, federal, or private contracts to be considered as a responsibility determination within the relevance of the current solicitation."

2. Chapter 3-122, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§ 3-122-9.03 Responsibility determination. The procurement officer shall make a determination of responsibility for any awardee. In making a responsibility determination, the procurement officer shall possess or obtain available information sufficient to be satisfied that a prospective offeror meets the requirements of HRS §103D-310(b), as well as the applicable standards set forth in the solicitation and pursuant to the designated method of procurement. The procurement officer may consider available recent and relevant past performance of the contractor as it applies to a responsibility determination for the current solicitation."

3. Chapter 3-122, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§3-122-52.1 Clarification Communications during Evaluation. (a) During the initial evaluation of proposals or bids, a procurement officer may engage in limited exchanges of direct clarification communications with an offeror when the procurement officer believes there is an

apparent mistake in a proposal that would have otherwise prevented an offeror from being included on the "priority list;

(b) The communications shall be documented and be limited to written exchanges to resolve specific apparent minor or clerical errors, to provide an opportunity to clarify specific aspects of the offer for responsibility or responsiveness determinations."

DRAFT

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to chapter 3-122, Hawaii Administrative Rules, on the Summary Page dated October 30, 2014 were adopted at the Procurement Policy Board meeting on October 30, 2014, pursuant to interim rules authorized by §103D-202, Hawaii Revised Statutes.

The rules replace rules previously adopted and effective on 03/17/2008. The rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

GREGORY L. KING
Chairperson
Procurement Policy Board

DEAN H. SEKI
State Comptroller

Dated: _____

Filed

APPROVED AS TO FORM:

Deputy Attorney General